IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.128 OF 2006

M/s.Mahindra & Mahindra Ltd.
a company Incorporated under
the Companies Act, 1956 and
having its office at Akurli
Road, Kandivali (East),
Mumbai - 400 101 .. Appellants.

V/s.

Commissioner of Central Excise,
Mumbai-V, 5th Floor, Utpad
Shulk Bhavan, Plot No.C-24,
Sector "E", Bandra Kurla
Complex, Bandra (E),
Mumbai - 400 051. .. Respondents.

Mr.P.D. Shah with Mr.Bharat Raichandani i/by PDS Legal for the appellants.

Mr.K.R. chaudhari with Mr.N.D. Sharma for the respondents.

CORAM : F.I. REBELLO &
D.B. BHOSALE, JJ.

DATED : 17TH AUGUST, 2007.

ORAL JUDGMENT : (Per F.I. Rebello, J.)

1. This appeal raises the following question of law :

> "Under the facts and circumstances of the case, whether the CESTAT was right in denying refund under entry 195 to Notification No.4/97-CE dated 1st march, 1997 ?"

2. Apart from the said question, other questions have been framed. In our opinion, the question as framed substantially covers other

questions.

3. The entire case of the appellant is based on the notification styled as ‘General Exemption No.66’ and entry under Serial No.195 is shown as under :-

"195. 87.03. Motor vehicle, which after clearance has been registered for use solely as -
(i) taxi;
(ii) ambulance".

. We are here concerned with the use of a vehicle as a taxi.

4. The appellants, during the time prescribed by Section 11-B of the Central Excise Act, 1944 having cleared 50 motor vehicles, applied for refund in the sum of Rs.4,72,635/-. The Assistant Commissioner, on considering the said application substantially allowed the claim, except to the extent of Rs.31,509/-. Revenue aggrieved, preferred an appeal to the Commissioner of Central Excise (Appeals). The Commissioner in respect of four claims held that there is nothing in the notification by which the period of registration which is 3 months, if not complied with, can be condoned. It was further held that there cannot be

any condonation as far as fulfilment of the statutory provisions. The appellants had placed reliance on the judgment of Bajaj Auto Limited Vs. Collector of Central Excise, Pune reported in 1997 (95) ELT 246 (T). The Commissioner, did not accept the ratio of that judgment and distinguished the same. However, considering the finding that there was no power of relaxation, allowed departments appeal.

5. The appellants aggrieved preferred an appeal before CESTAT. The learned Tribunal in para 2 held that the period for registration was three months from the date of clearance of the vehicles and there is no provision for condoning or extending the period of three months in the relevant notification. It is this order which is the subject matter of present appeal.

6. The question that we have been called upon to consider is whether the notification permits the Competent Authority to allow refund in a case, where a vehicle was registered more than three months after clearance but within the six months period within which an application for refund can be made in terms of Section 11B of the Central Excise Act. Reference may be gainfully made to General Exemption No.66 under Serial No.195 with reference to para 34.

We are concerned with para 34(b) which reads as under :

> 34. If, -
>
> (a) -----
>
> (b) the manufacturer furnishes to the Assistant Commissioner of Central Excise a certificate from an officer authorised by the concerned State Transport Authority, to the effect that the said motor vehicle has been registered for use solely as a taxi or ambulance, as the case may be, within three months of the clearance of the said motor vehicle from the factory of manufacture of such extended period as the said Assistant Commissioner may allow;
>
> (emphasis supplied)
>
> (c) -----
>
> (d) -----
>
> (e) -----"

7. A reading of this para would indicate that the manufacturer must furnish to the Assistant Commissioner of Central Excise, a certificate from an Authorised Officer of the State Transport Authority. The certificate must be to the effect that the motor vehicle has been registered for use solely as a taxi or ambulance, as the case may be, within three months of the clearance of the said motor vehicle from the factory of manufacturer or such extended period as the Assistant Commissioner may allow.

. A perusal, therefore, of the said paragraph

would indicate that there is no time limit for production of the certificate. However, considering the limitation provided under Section 11B, as the application for refund cannot be submitted after six months, the period can be said to be co-extensive with that period of six months.

8. The second aspect is that the certificate must disclose that the vehicle must has been registered within three months of the clearance. The question is whether there is power in the Assistant Commissioner to extend the period of registration for producing the certificate. As we have noted earlier, there is no time limit specified in para 34(b), by which the certificate must be produced. At any rate, it cannot be before the expiry of three months period as the certificate can be issued within three months or on the expiry of the three months, as the case may be. Therefore, the extended period can only be the extended period of registration which in any event cannot be more than six months as set out earlier.

. In our opinion, therefore, the expression "or such extended period, as the Assistant Commissioner may allow" is related to registration of vehicle and not to limitation to produce the certificate. As long as the certificate is produced

and the application for refund is made before the expiry of six months and if the Assistant Commissioner has exercised his power of extending the period to register the vehicle, the party applying will be entitled to refund in terms of notification. The extended period which the Assistant Commissioner may allow is the period for registration of the vehicle. This power advisedly is because of the various requirements, so far the vehicle can be registered. This power necessarily will have to be exercised at the time the certificate is sought.

9. In the instant case, we find that the Authority below did not address itself to the issue based on its understanding that there is no power. If the expression "such extended period" is not construed in the manner which we have construed the said expression would become meaningless. In Bajaj Auto Limited (supra), the Tribunal proceeded on the footing, that the delay in obtaining certificate was only a procedural lapse and if there was substantial compliance, benefit ought to be given to the appellants therein. In our opinion, though there also a certificate was produced beyond a period of three months, the question which we have addressed is different from what was answered by the Tribunal in Bajaj Auto Limited. Even otherwise considering

our judgment, we approve with the view taken in Bajaj Auto Limited.

10. The question, therefore, is what is the relief that the appellants herein will be entitled to, considering our finding that there is power in the Assistant Commissioner to extend the period of registration as long as it is not beyond six months.

11. In the instant case, the Assistant Commissioner, Central Excise merely proceeded on the basis that the appellants had satisfied the conditions under the Notification and the refund claim was filed within six months. The issue whether on the facts he ought to have exercised discretion to extend the period of registration was not really addressed to by the Assistant Commissioner. Considering that, in our opinion, the ends of justice will be met if we set aside the orders dated 30-03-2005 passed by the CESTAT and order dated 14-7-2000 of the Commissioner (Appeals) and the order dated 16-11-1998 of the Assistant Commissioner to the extent of relief of the four vehicles mentioned earlier. The matter is remanded back to the Assistant Commissioner for reconsideration and disposal according to law in the light of what we have observed.

12. The question of law is accordingly answered and the appeal is partly allowed. In the circumstances, there shall be no order as to costs.

(F.I. REBELLO, J.)

(D.B. BHOSALE, J.)